

STATE OF MICHIGAN  
COURT OF APPEALS

---

DAVID L. KNOBLAUCH,

Plaintiff-Appellee,

v

THERESE M. KNOBLAUCH,

Defendant-Appellant.

---

UNPUBLISHED

April 15, 2003

No. 243629

Genesee Circuit Court

LC No. 92-172062-DM

Before: Markey, P.J., and White and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order changing custody of the parties' minor children from defendant to plaintiff. We affirm.

I. Procedural History

On January 27, 1994, a judgment of divorce was entered in this matter. As part of the judgment of divorce, defendant was awarded sole physical custody of the parties' minor children, David and Daniel. On August 31, 2001, plaintiff filed a petition to change custody of the parties' children from defendant to plaintiff. After an evidentiary hearing regarding plaintiff's petition, the trial court found that it was in the best interests of the children to change physical custody to plaintiff. Defendant appeals this order, arguing that the trial court erred in its findings on specific child-custody best interest factors because such findings were against the great weight of the evidence.

II. Analysis

A. Standard of Review

In custody cases, this Court reviews for clear legal error a trial court's choice, interpretation, or application of the existing law. *Foskett v Foskett*, 247 Mich App 1, 4-5; 634 NW2d 363 (2001). This Court employs the great weight of the evidence standard to review findings of fact. *Id.* at 5. This Court will sustain the trial court's factual findings unless "the evidence clearly preponderates in the opposite direction." *Id.* The trial court's discretionary rulings, including a determination on the issue of custody, are reviewed for an abuse of discretion. *Id.*

When confronted with a petition to change custody, a trial court must determine the appropriate burden of proof to place on the party seeking the change. *Foskett*, *supra* at 5. In ascertaining the proper burden, the trial court must first determine whether an established custodial environment exists. *Id.* “An established custodial environment, however, need not be limited to one household; it can exist in more than one home.” *Mogle v Scriver*, 241 Mich App 192, 197-198; 614 NW2d 696 (2000). “If the trial court finds that an established custodial environment exists, then the trial court can change custody only if the party bearing the burden presents clear and convincing evidence that the change serves the best interests of the child.” *Foskett*, *supra* at 6. However, a custody order may only be modified on a showing of proper cause or a change in circumstances. MCL 722.27(1)(c); *Foskett*, *supra* at 5. Where the party seeking to change a custody order has not carried the initial burden of establishing either proper cause or change of circumstances, the trial court is not authorized to revisit an otherwise valid custody order or consider the statutory best interest factors. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994).<sup>1</sup> A determination of whether a change in custody would be in the child’s best interest is made by weighing the best interest factors set forth in MCL 722.23. *Foskett*, *supra* at 9. A trial court must consider and explicitly state its findings and conclusions with respect to each of the factors. *Id.* In the present case, the trial court found that an established custodial environment existed with both parties. Accordingly, the trial court could issue an order changing custody to plaintiff only upon plaintiff’s presentation of clear and convincing evidence that the modification was in the child’s best interests. MCL 722.27(1)(c); *Foskett*, *supra* at 5.

#### B. Best Interest Factor (d)

Defendant first argues that the trial court’s finding that best interest factor (d) favored plaintiff was against the great weight of the evidence. MCL 722.23(d) considers “[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.” MCL 722.23(d). The trial court determined that this factor favored plaintiff, finding that the children’s living environment with defendant had not been stable because she had moved six times since the divorce.

Plaintiff testified that defendant had moved at least six times since the parties’ divorce and had lived with several different men, including her second husband, a boyfriend, and her current fiancé. At the time of the evidentiary hearing, defendant was residing with her fiancé, Brian Svehla. Defendant admitted that she had rented several apartments, but testified that, at the time of the evidentiary hearing, she had lived in the same home for approximately three years. Defendant testified that Svehla was the only boyfriend she had lived with. Plaintiff admitted that he had also previously made frequent moves because of his job as a contract engineer, but plaintiff’s frequent moves were not relevant to the determination of this factor because he did not have physical custody of the children. Furthermore, plaintiff testified that he planned to remain in the same area for three to five years. Plaintiff had been in a stable marriage for about eight years. Comparing the number and circumstances of the parties’ moves and the parties’ romantic relationships, we conclude that the trial court’s finding that plaintiff was better

---

<sup>1</sup> Defendant does not argue on appeal that plaintiff failed to carry his initial burden of demonstrating proper cause or change of circumstances to revisit the best interest factors.

suited to provide the children with a stable, satisfactory environment was not against the great weight of the evidence.

#### C. Best Interest Factor (e)

Defendant next argues that the trial court's finding that best interest factor (e) favored plaintiff was against the great weight of the evidence. MCL 722.23(e) evaluates "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." The trial court determined that this factor favored plaintiff because of the length of plaintiff's marriage to his new wife and his position with General Motors. The trial court noted that defendant was not married and did not plan to get married until both her and her fiancé were done with school.

Defendant argues that the trial court improperly considered the parties' marital status in making its determination that factor (e) favored plaintiff. This Court has held that unmarried cohabitation, alone, is not enough to constitute immorality under best interest factor (f). *Truitt v Truitt*, 172 Mich App 38, 46; 431 NW2d 454 (1988). However, defendant cites no law supporting her argument that the trial court may not consider the parties' marital status in making its determination regarding best interest factor (e). We note that the parties' marital status may be in fact relevant to a determination of the permanence of the custodial home.

At the time of the evidentiary hearing, plaintiff had been married to his current wife, Kathryn Knoblauch, for about eight years. Defendant, on the other hand, had a second marriage and divorce, and was engaged to be married to Svehla at the time of the evidentiary hearing. Although Svehla and defendant intended to eventually be married, they planned to finish school first. Defendant did not have any definite plans for a wedding. The trial court noted that both plaintiff's wife and defendant's fiancé were good people. However, plaintiff had been with his wife longer, was married, and offered a strong family unit. After reviewing this evidence, we are not persuaded that the great weight of the evidence weighs against the trial court's finding that plaintiff can provide a more permanent family unit or home.

#### D. Best Interest Factor (h)

Defendant next argues that the trial court's finding that best interest factor (h) favored plaintiff was against the great weight of the evidence.<sup>2</sup> MCL 722.23(h) considers "[t]he home, school, and community record of the child." The trial court found that this factor favored plaintiff based on defendant's current marital status and the length of plaintiff's marriage. The trial court noted that defendant was not married and that there was no guarantee that she would be married and that she would not have to move again. In stating on the record its findings regarding factor (h), the trial court only briefly discussed the marital status of the parties and did

---

<sup>2</sup> Once again, defendant argues that the trial court improperly considered the parties' marital status in making its determination that factor (h) favored plaintiff. As discussed, this Court has held that unmarried cohabitation, alone, is not enough to find a party morally unfit under best interest factor (f). *Truitt, supra* at 46. However, defendant cites no law supporting her argument that the trial court may not consider the parties' marital status in making its determination regarding best interest factor (h).

not go into detail about the home, school, and community record of the children. The reasons articulated on the record by the trial court were not enough to find in favor of plaintiff in regard to this factor. Furthermore, after reviewing the record, we conclude the evidence was not sufficient to weigh this factor in favor of plaintiff. Therefore, the trial court erred in finding factor (h) in favor of plaintiff.<sup>3</sup>

#### E. Best Interest Factor (j)

Defendant next argues that the trial court's finding that best interest factor (j) favored plaintiff was against the great weight of the evidence. MCL 722.23(j) considers "[t]he willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents." The trial court determined that this factor favored plaintiff based on defendant's hostility toward plaintiff, defendant's lack of willingness to encourage a relationship between the children and plaintiff, and plaintiff's genuine willingness to facilitate a relationship between defendant and the children.

Plaintiff's wife testified that plaintiff encouraged the children to enjoy a good relationship with defendant. If David complained to plaintiff about defendant, plaintiff encouraged him to discuss the problem directly with defendant. Additionally, plaintiff testified that it was important for the children to love both plaintiff and defendant, and that he encouraged David to discuss issues with defendant and to love her. Plaintiff also testified that he would be willing to do whatever he could to facilitate a relationship between the children and defendant. Defendant also testified that the children should love plaintiff. Defendant, however, testified that it was not right for the children to drive every other weekend to see plaintiff because they would miss parties, sports, and neighborhood gatherings. Defendant also indicated that she would ask the children if they wanted to call plaintiff, but stated that they did not want to call plaintiff. Defendant testified that plaintiff was verbally abusive toward her and called her obscene names in front of the children. However, "[d]ue regard shall be given to the trial court's superior opportunity and ability to judge the credibility of witnesses." *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998). Given this evidence, we conclude that the trial court's finding that plaintiff was more willing and able to facilitate a relationship between the children and defendant was not against the great weight of the evidence.

#### F. Best Interest Factor (k)

Finally, defendant argues that reversal is necessary because the trial court failed to make sufficient factual findings regarding factor (k). In particular, defendant argues that the trial court failed to consider evidence that plaintiff threw shoes at defendant during the marriage and failed to reach a conclusion in regard to this factor. MCL 722.23(k) examines "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." In making its findings regarding this factor, the trial court noted that the only evidence of domestic violence was a photograph showing bruises on David's neck and an incident related by one of the children

---

<sup>3</sup> As discussed, *infra*, even if we assume that factor (h) favored defendant, the trial court's error in finding for plaintiff in regard to this factor was harmless.

in which defendant yelled at him and threw a phone at him. As discussed, the trial court must consider and explicitly state its findings and conclusions with respect to each of the factors. *Foskett*, *supra* at 9. However, the trial court need not comment on every matter of evidence or declare its acceptance or rejection of every proposition argued. *LaFleche v Ybarra*, 242 Mich App 692, 700; 619 NW2d 738 (2000). Therefore, although the trial court did not mention defendant's testimony that plaintiff threw shoes at her, the trial court was not required to comment on this testimony when making its findings regarding factor (k).<sup>4</sup>

Defendant also appears to argue that the trial court failed to reach a conclusion regarding factor (k). A trial court's failure to state a conclusion on each of the best interest factors is error requiring reversal. *Schubring v Schubring*, 190 Mich App 468, 470; 476 NW2d 434 (1991). Although the trial court in this case did not specifically state whether factor (k) favored plaintiff or defendant, it is clear from the trial court's ruling and the evidence it considered that it found in favor of plaintiff in regard to this factor.

### III. Conclusion

We conclude that the trial court's findings regarding best interest factors (d), (e), and (j) were not against the great weight of the evidence and the trial court made sufficient factual findings and conclusions regarding best interest factor (k), but the trial court erred in failing to articulate sufficient reasons for finding factor (h) in favor of plaintiff. However, we conclude that the trial court's error in regard to factor (h) was harmless and the trial court did not abuse its discretion in awarding physical custody of the children to plaintiff.<sup>5</sup> Even if we assume that factor (h) favored defendant, the only factor the trial court found to favor defendant was factor (b). The trial court properly found that factors (a), (d), (e), and (i) favored plaintiff. Furthermore, the trial court noted that it gave factor (i), which favored plaintiff, considerable weight in making its determination. Therefore, we conclude that the trial court did not abuse its discretion in changing custody of the parties' minor children from defendant to plaintiff.

Affirmed.

/s/ Jane E. Markey  
/s/ Helene N. White  
/s/ Brian K. Zahra

---

<sup>4</sup> It should be noted that, in making its factual findings, the trial court also did not mention plaintiff's wife's testimony that David had told her that defendant had choked him.

<sup>5</sup> Harmless error in a child custody dispute does not require reversal. *Fletcher v Fletcher*, 447 Mich 871, 889; 526 NW2d 889 (1994).